U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF N-K-

DATE: SEPT. 12, 2016

APPEAL OF TEXAS SERVICE CENTER DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, a university instructor and multicultural education researcher, seeks classification as a member of the professions holding an advanced degree. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). The Petitioner also seeks a national interest waiver of the job offer requirement that is normally attached to this immigrant classification. *See* § 203(b)(2)(B)(i) of the Act, 8 U.S.C. § 1153(b)(2)(B)(i). U.S. Citizenship and Immigration Services (USCIS) may grant this discretionary waiver of the required job offer, and thus of a labor certification, when it is in the national interest to do so.

The Director, Texas Service Center, denied the petition. The Director found that the Petitioner qualified for classification as a member of the professions holding an advanced degree, but that she had not established that a waiver of a job offer would be in the national interest.

The matter is now before us on appeal. In her appeal, the Petitioner argues that the proposed benefit of her work will be national in scope and that she will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications. The Petitioner submits additional letters of support, teaching evaluations, university enrollment reports, and statistics reflecting the number of students she has taught.

Upon *de novo* review, we will dismiss the appeal.

I. LAW

To establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying visa classification, as either an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Because this classification normally requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

Section 203(b) of the Act states, in pertinent part:

> (2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –

> (A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
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> (B) Waiver of job offer –
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> > (i) National interest waiver. . . . the Attorney General[1] may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

Neither the statute nor the pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Matter of New York State Department of Transportation, 22 I&N Dec. 215, 217-18 (Act. Assoc. Comm'r 1998) (*NYSDOT*), set forth several factors which must be considered when evaluating a request for a national interest waiver. First, a petitioner must demonstrate that he or she seeks employment in an area of substantial intrinsic merit. *Id.* at 217. Next, a petitioner must show that the proposed benefit will be national in scope. *Id.* Finally, the petitioner seeking the waiver must establish that he or she will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications. *Id.* at 217-18.

While the national interest waiver hinges on prospective national benefit, a petitioner's assurance that he or she will, in the future, serve the national interest cannot suffice to establish prospective national benefit. *Id.* at 219. Rather, a petitioner must justify projections of future benefit to the national interest by establishing a history of demonstrable achievement with some degree of influence on the field as a whole. *Id.* at 219, n.6.

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[1] Pursuant to section 1517 of the Homeland Security Act of 2002 ("HSA"), Pub. L. No. 107-296, 116 Stat. 2135, 2311 (codified at 6 U.S.C. § 557 (2012)), any reference to the Attorney General in a provision of the Act describing functions that were transferred from the Attorney General or other Department of Justice official to the Department of Homeland Security by the HSA "shall be deemed to refer to the Secretary" of Homeland Security. *See also* 6 U.S.C. § 542 note (2012); 8 U.S.C. § 1551 note (2012).

II. ANALYSIS

The Petitioner received her Ph.D. in Curriculum and Instruction from the in 2013. The Director determined that the Petitioner qualified as a member of the professions holding an advanced degree. The sole issue in contention is whether the Petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest according to the three-pronged analysis set forth in *NYSDOT*.

A. Substantial Intrinsic Merit

The Petitioner seeks to continue her work as an instructor on the faculties of the and She submitted documentation showing that her teaching activities and research concerning multicultural education are in areas of substantial intrinsic merit. Accordingly, the record supports the Director's determination that the Petitioner meets the first prong of the *NYSDOT* national interest analysis.

B. National in Scope

The Petitioner provided evidence of her activities as an instructor and educational researcher. The Director determined that the Petitioner's instructional activities as a university professor would not impart national level benefits. The Director cited to *NYSDOT*, 22 I&N Dec. at 217, n.3 which mentions the limited scope "of a single schoolteacher in one elementary school." While the Petitioner's appellate submission includes statistics indicating the number of students who attended her courses at the there is no evidence establishing that the benefits of her instruction would extend beyond her students and universities such that they will have a national effect. Classroom teaching and online academic instruction, while important to individual students and to the institution at which it occurs, does not rise to the level of having national scope to merit a waiver of the job offer requirement. Therefore, we concur with the Director's determination that the benefit of the Petitioner's instructional activities would not be national in scope.

With respect to her activities as an educational researcher, however, we find that the proposed benefit of the Petitioner's work does have national scope. The Director noted that the Petitioner has authored scholarly work, but concluded that it would not impart national level benefits. On appeal, the Petitioner submits letters from faculty at the discussing her research concerning multicultural and linguistically diverse students and its potential benefit to the nation. The record includes evidence indicating that the proposed benefit of her multicultural education research has national and international impact, as the results from her work are disseminated to others in the field through publication in education journals. Accordingly, we find that the proposed benefit of the Petitioner's educational research is national in scope, and the Director's determination on this issue is withdrawn.

C. Serving the National Interest

It remains, then, to determine whether the Petitioner will benefit the national interest to a greater extent than an available U.S. worker with the same minimum qualifications. The Director determined that the Petitioner's impact and influence on her field did not satisfy the third prong of the *NYSDOT* national interest analysis.

In addition to documentation of her research articles, conference participation, alumni and honor society memberships, graduate assistantships, employment verifications, teaching evaluations, and academic credentials, the Petitioner submitted various reference letters discussing her work in the field. For example, professor of statistics and research methodology, indicated that the Petitioner's research offers new strategies, tools and training sessions that "may be adopted and considered by teacher education program planners" to help teachers become culturally responsive when teaching second language learners. however, did not offer any examples of school systems that have implemented the Petitioner's approaches or of how her work has otherwise affected the field as a whole.

professor of sociology at the stated: "[The Petitioner] currently has several articles under review from her dissertation for publication in education literature. I fully expect these will result in important scholarly work . . . ." The record includes copies of the Petitioner's articles, but there is no evidence showing that they had been published at the time of filing the Form I-140, Immigrant Petition for Alien Worker, on July 29, 2014. Eligibility must be established at the time of filing. 8 C.F.R. § 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971). Accordingly, we cannot consider the Petitioner's research findings that were not yet published as of the filing date, and thus had not been disseminated in the field, to establish her eligibility at the time of filing.

associate superintendent of the Arkansas public school district, noted that the Petitioner collaborated with the school district when performing research for her doctoral dissertation. explained that the Petitioner's "research is bringing more in-depth understanding and new findings related to the issues toward teacher attitudes, as well as, proposing potential solutions to improving the attitude of teachers in working with culturally diverse students." While mentioned that the Petitioner's "research has contributed significantly to the literature on how educators can better inform their practice," she does not identify any school districts that have adopted the Petitioner's methodologies or findings at a level commensurate with impact on the field as a whole.

professor and chair of the department of political science at the explained that the Petitioner's research will "provide school administrators with concrete guidelines to design effective programs or workshops that can assist subject area teachers with models and tools to implement a culturally appropriate curriculum," but there is no documentary evidence demonstrating that her research has already altered instructional practices, curricula, or teaching guidelines in the field of multicultural education. Although the Petitioner's Ph.D. research has value, any research must be original and likely to present some benefit if it is to receive funding

and attention from the academic or scientific community. In order for a university, publisher, or grantor to accept any research for graduation, publication, or funding, the research must offer new and useful information to the pool of knowledge. Not every graduate student who performs original research that adds to the general pool of knowledge in the field inherently serves the national interest to an extent that is indicative of influence on the field as a whole.

associate professor of English education, noted that the Petitioner "proposed a new technical way in research by employing critical ethnographic methodology to acknowledge the ideological structures and values behind the sensitivity to diversity in the education system," but did not provide any examples of how the her approach has affected the field as a whole. In addition, an assistant professor at the indicated that the Petitioner "has excellent research skills and abilities in conducting mixed methods research techniques." A statement that a petitioner possesses useful skills or experience relates to whether similarly-trained workers are available in the United States and falls under the jurisdiction of the U.S. Department of Labor through the labor certification process. *See NYSDOT*, 22 I&N Dec. at 221.

and both mentioned that the Petitioner has performed proofreading and editing for their scholarly articles, but there is no evidence demonstrating that such informal peer review is indicative of influence in the education field. The Petitioner has not established that her occasional participation as a reviewer of her colleagues' work is an indication that she will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications.

university professor in the department of sociology and criminal justice at the stated that the Petitioner's "research provides subject area teachers with models, skills, and tools to implement a culturally responsive curriculum. Her work helps lessen the achievement gap in today's classroom and reduces schools' dropout rates of CLD [culturally and linguistically diverse] students." The Petitioner, however, has not shown that her findings or proposed methodologies have closed the achievement gap or reduced CLD dropout rates in any U.S. school systems, or have otherwise influenced the field as a whole.

a professor in the department of curriculum and instruction at the explained that the Petitioner's "research will assist teacher education programs, school districts, and schools' administrations in designing and planning more effective programs and workshops that provide teachers with models, skills and tools to implement a culturally responsive curriculum," but did not indicate how her findings have already affected the field of multicultural education. Similarly, professor emeritus at the indicated that the Petitioner "is in a unique position to develop training materials for teachers that could have major impact." While and attested to the potential impact of the Petitioner's work, they did not offer any examples indicating that her work already has been implemented in various school systems, has been incorporated into teacher training materials, or has

otherwise influenced the field as a whole. Again, eligibility must be established at the time of filing. 8 C.F.R. § 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49.

With respect to the Petitioner's teaching activities, an instructor and laboratory supervisor in the department of chemistry and biochemistry at the noted that the Petitioner "has taught courses from the freshman level through sophomore level and always teaches lectures that are tailored to the students that are in the class." The record includes student survey results and teacher performance evaluations that show the Petitioner's effectiveness as an instructor at the and but the submitted evidence does not indicate that she has had the wider impact and influence necessary to qualify for the national interest waiver under the Act or regulation as framed by *NYSDOT*.

The Petitioner submitted letters of varying probative value. We have addressed the specific affirmations above. Generalized conclusory statements that do not identify specific contributions or their impact in the field have little probative value. *See 1756, Inc. v. U.S. Att'y Gen.*, 745 F. Supp. 9, 15 (D.D.C. 1990) (holding that an agency need not credit conclusory assertions in immigration benefits adjudications). In addition, uncorroborated statements are insufficient. *See Visinscaia v. Beers*, 4 F.Supp.3d 126, 134-35 (D.D.C. 2013) (upholding USCIS' decision to give limited weight to uncorroborated assertions from practitioners in the field); *see also Matter of Caron Int'l, Inc.*, 19 I&N Dec. 791, 795 (Comm'r 1988) (holding that an agency "may, in its discretion, use as advisory opinions statements . . . submitted in evidence as expert testimony," but is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought and "is not required to accept or may give less weight" to evidence that is "in any way questionable"). The submission of reference letters supporting the petition is not presumptive evidence of eligibility; USCIS may evaluate the content of those letters as to whether they support the petitioner's eligibility. *Id. See also Matter of V-K-*, 24 I&N Dec. 500, n.2 (BIA 2008) (noting that expert opinion testimony does not purport to be evidence as to "fact"). As the submitted reference letters did not establish that the Petitioner's work has influenced the field as a whole, they do not demonstrate her eligibility for the national interest waiver.

In the appeal brief, the Petitioner summarizes the various findings from her research papers. Regarding her research findings, there is no presumption that every scholarly article demonstrates influence on the field as a whole; rather, the Petitioner must document the actual impact of her findings. In this instance, there is no evidence showing that once disseminated through publication or presentation, the Petitioner's work has garnered a significant number of independent citations or that her findings have otherwise affected the field of multicultural education as a whole.

Furthermore, the Petitioner points to her design of a " for the and her "overview of how is used in teacher education programs," but her references do not specifically mention this work or explain its effect on the field of multicultural education. Regardless, there is no documentary evidence reflecting that the Petitioner's and overview have influenced the field as a whole.

III. CONCLUSION

Considering the letters and other evidence in the aggregate, the Petitioner has not established by a preponderance of the evidence that she has a past record of demonstrable achievement with some degree of influence on the field as a whole or that she will otherwise serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications. Therefore, the Petitioner has not demonstrated that a waiver of the job offer requirement will be in the national interest of the United States. The burden is on the Petitioner to show eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, the Petitioner has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.

Cite as *Matter of N-K-*, ID# 8771 (AAO Sept. 12, 2016)